

CAPITOL RECORDS, INC., a Delaware Corporation; UMG RECORDINGS, INC., a Delaware Corporation; SONY BMG MUSIC ENTERTAINMENT, a Delaware General Partnership; and VIRGIN RECORDS AMERICA, INC., a California corporation,

Plaintiffs,

Vs.

BRUCE HAWKINS, JR.,

Defendant.

THIS MATTER is before the court on plaintiffs’ “Notice of Dismissal With Prejudice” (#14). There are two problems with plaintiffs’ “notice”:

- First, a “certificate of service” is required by Rule 5(d), Federal Rules of Civil Procedure, and electronic filing has not changed that rule. In fact, Section II(B)(3) of the Administrative Procedures Governing the Filing and Service by Electronic Means, 3:05MC44 (W.D.N.C. 2005) specifically provides that a “certificate of service . . . is still required when a party files a document electronically.” A.P.G.F.S.E.M., at 8. This is the second time the court has informed counsel of this rule, and trusts it will be the last.

Second, defendant has filed an Answer to the Complaint, making unilateral dismissal of the complaint impossible. Rule 41(a)(1), Federal Rules of Civil Procedure, provides, in relevant part as follows:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Fed.R.Civ.P. 41(a)(1). While this may seem to be overly stringent, a dismissal not in compliance with the rule is simply ineffective at terminating the case. Having considered plaintiffs' pleading, the court enters the following Order.

ORDER

IT IS, THEREFORE, ORDERED that plaintiffs' Notice of Dismissal With Prejudice (#14) is **STRICKEN** for non-compliance with Rule 41(a)(1).

Signed: May 18, 2006



Dennis L. Howell
United States Magistrate Judge

